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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,346	03/26/2004	C. Robert Castaneda	STETHOSCOPE.PAT	8233

7590

07/06/2005

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EXAMINER
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CONLEY, SEAN EVERETT

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,346	<b>Applicant(s)</b> CASTANEDA, C. ROBERT	
	<b>Examiner</b> Sean E. Conley	<b>Art Unit</b> 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1, drawn to a stethoscope cleansing unit, classified in class 422, subclass 292.
- II. Claim 2, drawn to a business method for advertising medical products, classified in class 283, subclass 56.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process as claimed can be practiced with medical products other than a stethoscope cleansing unit. For example, the method of advertising medical products can use a blood sterilization device to market that particular product.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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During a telephone conversation with David Henry on June 29, 2005 a provisional election was made without traverse to prosecute the invention of group II, claim 2. Affirmation of this election must be made by applicant in replying to this Office action. Claim 1 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
1. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guim (U.S. Patent No. 3,530,261) in view of Lake, Jr. et al. (Patent Application Publication US 2004/0258560 A1).

Guim discloses a sterilizing device for telephone handsets. The device comprises a holding chamber (1) with a reversibly opening chamber lid member (2),

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said holding chamber (1) with an inner core (10) comprising a wicking member (sponge) extending distally down through said holding chamber (1) and proximally up through an opening formed by sidewall (9) in said reversibly opening chamber lid member (2); a supply of disinfectant suitable for wicking by the wicking member; and a telephone receiving member (sidewall (9)) attached to said holding chamber lid member (2), allowing access to proximal end of said wicking member (see figures 1-6; col. 1, lines 32-37; col. 2, line 7-45). This reference has been relied upon to teach that it is known to incorporate a receiving member in a reversibly removable lid member and a wicking means located in an opening of the reversibly removable lid member. Guim fails to teach a device that includes a stethoscope-receiving member, a marketers logo attached to the cleansing unit, or the step positioning the unit for viewing by patients and medical personnel in medical service facilities.

Lake, Jr. et al. disclose a stethoscope cleansing unit comprising a holding chamber (14) with a reversibly opening chamber lid member (30), said holding chamber with an inner core (18) comprising a wicking member extending distally down through said holding chamber (14); a measure of antiseptic liquid suitable for wicking by said wicking member; and a stethoscope-receiving member (44) attached to said holding chamber lid member, allowing access to proximal end of said wicking member (see figures 1 and 2; paragraphs [0022]-[0026]). Lake, Jr. et al. further teach the step of attaching indicia (88) to the exterior of stethoscope cleansing unit. The indicia (88) is a printed, embossed alpha-numeric, or graphical indicia and indicates the type or size of the stethoscope cleansing unit (see figure 6; paragraph [0030]). Additionally, Lake, Jr.

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et al. disclose that the device is fitted with an attachment such as a lanyard (74) which is secured to an attachment member (78). Suitable structure has a loop (82) for securing the cleansing unit to a stethoscope in order to prevent the decontamination device from becoming separated from the medical apparatus, thus the cleansing unit is positioned for viewing by patients and medical personnel in medical facilities (see figure 5; paragraph [0029]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Guim and replace the telephone receiving member with a stethoscope receiving member (44) as disclosed by Lake, Jr. et al. in order to sterilize a device other than a telephone, such as a stethoscope diaphragm. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the sterilizing device of Guim and incorporate the steps of adding a marketers logo and also position the device for viewing by patients and medical personnel as taught by Lake, Jr. et al. in order to clearly identify the product with the logo and provide a cleansing unit that is conveniently located near the product to be treated.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 29, 2005

SEC

A.S.C.

  
GARY K. GRAHAM  
PATENT EXAMINER  
GROUP 1700